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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,230	06/12/2001	Kenneth C. Budka	2925-0551P	2080

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EXAMINER

PICH, PONNOREAY

ART UNIT PAPER NUMBER

2135

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/878,230

Applicant(s)

BUDKA ET AL.

Examiner

Ponnoreay Pich

Art Unit

2135

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-18.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Applicant's arguments are unpersuasive. See attached.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

### ***Response to Arguments***

The examiner notes that no proposed amendments to the claims were made by the applicant after final rejection. The applicant only presented arguments; those arguments were unpersuasive.

Applicant's first argument alleges that Asokan was used to disclose processing the communication address based on a failure count accessed using the identifier for the user equipment and that the examiner's argument that Asokan was not used to meet this limitation was incorrect. The examiner asserts that the **combination** of He et al and Asokan was used to meet this limitation, not just Asokan alone. The examiner notes that the examiner did state that He et al was used for that purpose in the response to argument section of the final office action, however, this was a typo on the part of the examiner that is obvious from looking at the rejection of claim 1 both in the non-final and final office action. The applicant is reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, the examiner respectfully points out that even if Asokan did not teach what the examiner believed he teaches, the examiner also took an official notice on the first non-final office action that the applicant never challenged:

*However, a request by user equipment for a communication address has been known to one of ordinary skill in the art at the time of the applicant's invention. It is also known by one of ordinary skill that the request can include the user equipment's identifier, which is used for authenticating whether or not the user equipment has rights to access a network resource.*

The applicant is reminded that applicant is required to seasonably traverse any official notice taken by the examiner or it is taken that applicant is admitting that the well known art statement is prior art, see MPEP 2144.03. Even without Asokan, the combination of He et al and the above official notice is enough to meet the limitation under contention.

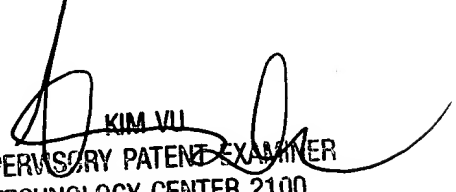
Applicant then alleges that the examiner's statement of inherency is misplaced when the examiner stated in the last arguments that "inherently from the network's perspective, the request is coming from user equipment." The examiner respectfully disagrees. For the record, the limitation in which the above inherency statement was applied recites, "processing the communication address request based on a failure count accessed using the identifier for the **user equipment**." Applicant's argument to try to traverse the examiner's inherency statement by saying that from the network's perspective, in the He et al reference, access is granted or denied to the user and not to the equipment is flawed. **User equipment** is much broader than merely a piece of network equipment as applicant seems to be interpreting the claim limitation. The examiner submits that "user equipment" can refer to the combination of a user and the equipment/device the user is using, hence the term "user equipment." The term can refer to just the networking device without the user like applicant is interpreting the term. Applying an even broader interpretation to the term, the examiner submits that "user equipment" can refer to even just the user himself/herself. Even if a user moves from one device to another when making the communication address request, the identifier as applicant has pointed out, would follow the user and there is nothing recited in the

Art Unit: 2135

limitation under contention that limits user equipment to the user with the same piece of networking device every time a request is made. The examiner further notes that applicant did not challenge the examiner's statement made on page 3, paragraph one of the final office action in which the examiner stated that the identifier of the user equipment is also inherently whatever identifier the user used to make the request....

Applicant then disagreed with the examiner's response to arguments when the examiner stated "to have access to a network, the user must obtain a communication address, i.e. IP or network address." The applicant stated that in He et al, the IP or network address is provided by the server while in a wireless system, user equipment does not have a static address and must request a communication address. The examiner does not see what difference it makes whether an address is static or dynamic. Applicant has stated that in He et al, the address is provided by a server, which does not traverse the examiner's argument. A server responds to requests from a client. Therefore, to supply that static address, the client/user/user equipment must have requested an address from the server to begin with. Whether that address is static or dynamic is irrelevant.

The rest of applicant's arguments are for allowability of the dependent claims based on claim 1 being allowable. However, as the examiner believes he has traversed applicant's arguments for claim 1, the examiner submits that the application as presented is not in a condition for allowance. The finality of the last office action is maintained.

  
KIM VII  
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